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**TO** : Cyprus Investment Firms

**FROM** : Cyprus Securities and Exchange Commission

**DATE** : February 2, 2017

**CIRCULAR NO.** : C181

**SUBJECT** : Obligations of CIFs when providing information to clients on the services and instruments offered

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The Cyprus Securities and Exchange Commission ('the CySEC') wishes, with this circular, to set important standards to assist the Cyprus Investment Firms ('the CIFs') in meeting their obligations to act in the best interest of their clients. This circular establishes standards for the assessment of knowledge and competence for staff<sup>1</sup> who are involved in the provision of information to clients regarding investment and ancillary services and financial instruments that a CIF offers.

The relevant regulatory requirements are those stated below:

- i. Articles 18(2)<sup>2</sup> and 36<sup>3</sup> of the Investment Services and Activities and Regulated Markets Law of 2007, as in force ('the Law').
- ii. Paragraph 4<sup>4</sup> and Part V<sup>5</sup> of Directive DI144-2007-01 of 2012 of the CySEC ('the Directive').
- iii. Part III<sup>6</sup> of Directive DI144-2007-02 of 2012.

Further to ESMA's publication of the paper ESMA/2015/1886 - Guidelines for the assessment of knowledge and competence ('the Guidelines') on 17 December 2015 and in preparation for its entry into force on 3 January 2018, CySEC encourages CIFs to take measures to apply the Guidelines the soonest possible.

#### **A. Scope of this circular**

- 1.** This circular applies to persons that communicate with CIF clients (potential and existing) with the purpose of promoting the CIF's services and products and providing

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<sup>1</sup> It means natural persons (including tied agents) providing relevant services to clients on behalf of the firm.

<sup>2</sup> Organisational requirements

<sup>3</sup> Conduct of business obligations when providing investment services to clients

<sup>4</sup> General organisational requirements

<sup>5</sup> Outsourcing requirements

<sup>6</sup> Provision of information to clients and potential clients

information to clients regarding investment and ancillary services and financial instruments that a CIF offers ('the Staff').

The Staff **must not** provide investment advice in relation to financial instruments. In case the CIF is authorised to provide investment advice, it shall be provided by authorised and qualified employees of the department that is responsible to do so.

2. This circular does not apply to persons who **only**:
  - i. Point out where clients can find information or direct clients on a CIF's website to find relevant information a client is seeking.
  - ii. Provide (technical) support to clients in relation to the platform, website and account opening procedure.
  - iii. Provide assistance in uploading documents in the platform.
  - iv. Accept clients' phone calls and redirect said clients to relevant departments.
  - v. Produce marketing and promotional material.
  - vi. Perform back office functions.
  - vii. Provide any other similar service.

#### **B. Organisational requirements for the Staff**

3. CIFs must ensure that the Staff possesses the necessary knowledge and competence to meet relevant regulatory and legal requirements and business ethics standards. The level and intensity of knowledge and competence expected for the Staff should be determined by CIFs, reflecting the scope and degree of the relevant services provided.

The Staff should possess an appropriate qualification and experience in the provision of such services to clients.

Certification in accordance with the Directive of the CySEC regarding the Certification of Persons and the Certified Registers ([R.A.D.174/2015](#)) (e.g. success in basic exams and registration in the Public Register) may be considered as an appropriate qualification.

4. On an on-going basis, CIFs must ensure that the Staff continues to possess appropriate qualifications and maintain and update its knowledge and competence by undertaking continuous professional development or training for the appropriate qualification, as well as specific training relevant to its field.
5. When a Staff member does not possess the necessary knowledge and competence, the said Staff member can provide the relevant services only under supervision and for limited period of time.
6. CIFs must clearly define the roles and responsibilities of the Staff and ensure that they know, understand and apply CIF's internal policies and procedures designed to ensure compliance with the relevant regulatory requirements.

7. CIFs must ensure that the remuneration of the Staff is in line with Circular C138 on the remuneration policies and practices.
8. CIFs must ensure that the Staff uses its **real name and not an alias, and does not give false information regarding its credentials**, when communicating with clients.
9. CIFs must draw up an information script or a standard FAQ template, stating the information that can be shared with clients. This script/template is approved by the compliance function and the board of directors and used by the Staff.
10. CIFs must ensure that practices such as frequent and repeated telephone calls to clients initiated by the Staff, and/or the use of aggressive language, and/or the exercising of pressure, urging/advising the client e.g. to invest and/or to deposit funds, **are not and must not be employed/used** by the Staff, as these are not consistent with the provisions of Article 36(1) of the Law.
11. CIFs must establish, implement and maintain appropriate procedures/controls for the assessment of the performance of the Staff and for taking measures (e.g. adopt a warning process, record possible punitive actions such as sanctions and/or dismissal of Staff), in instances where the assessment is poor or negative, and/or upon determining that the actions of a particular Staff member towards clients are contrary to the provisions of the Law and the present circular.

For example, in the event that a Staff member exerted intense and constant pressure to a retail client to deposit money and invest in complex instruments or provided investment advice to a retail client, the CIF must take actions against that Staff member in order to ensure that such behavior is not repeated (e.g. implement its warning process, impose sanctions and/or dismiss the Staff member who have acted in such manner).

It is provided that the Staff is informed in advance of the abovementioned.

In cases where a Staff member has been dismissed for a serious violation of regulatory requirements, information of such dismissal (along with all relevant facts) should be provided to the CySEC, which it will take actions (ranging from announcements naming the said Staff member, imposition of an administrative sanction, sending the case to the General Attorney for possible criminal violations, temporary prohibition of professional activity, discourage other CIFs from engaging that individual services).

### **C. Criteria for knowledge and competence of the Staff**

12. According to the Guidelines, CIFs must ensure that the Staff have the necessary knowledge and competence to:

- i. Understand the key characteristics, risk and features of those investment products available through the firm, including any general tax implications<sup>7</sup> and costs to be incurred by the client in the context of transactions. Particular care should be taken when giving information with respect to products characterised by higher levels of complexity.
- ii. Understand the total amount of costs and charges to be incurred by the client in the context of transactions in an investment product, or investment services or ancillary services.
- iii. Understand the characteristics and scope of investment services or ancillary services.
- iv. Understand how financial markets function and how they affect the value and pricing of investment products on which they provide information to clients.
- v. Understand the impact of economic figures, national/regional/global events on markets and on the value of investment products on which they provide information.
- vi. Understand the difference between past performance and future performance scenarios as well as the limits of predictive forecasting.
- vii. Understand issues relating to market abuse and anti-money laundering.
- viii. Assess data relevant to the investment products on which they provide information to clients such as Key Investor Information Documents, prospectuses, financial statements, or financial data.
- ix. Understand specific market structures for the investment products on which they provide information to clients and, where relevant, their trading venues or the existence of any secondary markets.
- x. Have a basic knowledge of valuation principles for the type of investment products in relation to which the information is provided.

**D. Outsourcing these activities to third parties/service providers**

- 13.** The activities mentioned in section A are considered critical or important operational functions of the CIF (paragraph 3 of Directive 144-2007-01 of 2012 ‘the Directive’) and therefore, they should be provided internally, either from the head office of the CIF or from its branch situated in the Republic or in another Member State.

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<sup>7</sup> General tax implications are referred to the investment service or financial instrument and/or the costs associated with it. CIFs are required to give information on all taxes payable via the firm as those taxes are element of the costs and associated charges with the service or the instrument. Therefore, the Staff needs to understand how for example a specific tax feature associated with a product functions. However, the requirement of ‘understanding general tax implications’ is not meant as the provision of individual tax advice.

14. It is highly unlikely that a CIF outsourcing these activities to a service provider established in a third country could demonstrate to CySEC that:
- i. The conditions with which the CIF must comply in order to be authorised and to remain so, are not undermined [paragraph 16(1)(c) of the Directive].
  - ii. The CIF can supervise effectively the outsourced activities [paragraph 16(3)(e) of Directive].
  - iii. CySEC has effective access to the business premises of the service provider [paragraph 16(3)(i) of the Directive].

On the other hand, it can be likely demonstrated that the abovementioned provisions are met, if the service provider is situated in a Member State and:

- it is either authorised pursuant to European Directive 2004/39/EC on markets in financial instruments, or
  - is acting under the full and unconditional responsibility of the CIF and is registered in accordance with Article 40 of the Law (tied agent).
15. The provisions of article 18(2)(d) of the Law and Part V of the Directive on outsourcing as well as the relevant circulars issued from time to time by the CySEC (eg C138), are fully applied.
16. This circular is fully applied to the service provider as well as to the staff of the service provider.
17. CySEC emphasises the CIF's obligation to supervise and effectively oversee the outsourced functions and its obligation to take appropriate measures when it determines that the service provider is not performing the said functions effectively and in accordance with the applicable legislation.

#### **E. Monitoring of the Staff and its activities – compliance function**

18. CIFs must ensure that the compliance function has sufficient resources and direct access to all relevant information in order to be able to monitor the activities performed by the Staff and assess its knowledge and competence.

This paragraph also applies when these activities are outsourced to a service provider.

19. It is noted that the provisions of [Circular C030](#) of the CySEC on certain aspects of the compliance function also apply in this case.
20. For an effective assessment of the Staff, the compliance officer must, *inter alia*, include in his monitoring the assessment, on a regular basis, of the telephone conversations between the Staff and the clients of the CIF.
21. The tasks carried out by the compliance function are recorded in a manner that enables the CySEC to assess and verify compliance of the CIF with its relevant obligations.

**F. Actions required by CIFs**

- 22.** CIFs must maintain all necessary records in a way that enables the CySEC to monitor compliance with the requirements under this Circular.
- 23.** CIFs are requested to:
- i. Review their policies and procedures and ensure that they fully comply with the provisions of this Circular.
  - ii. Ensure that their existing Staff possess the necessary knowledge and competence.
  - iii. Immediately take, without any delay, corrective measures, where necessary, in order to comply with this circular.
  - iv. Provide to the CySEC confirmation signed by the board members as to their compliance with this circular and, where applicable, provide reference to any corrective measures adopted for their compliance.

The above confirmation must be sent to the electronic address [supervision@cysec.gov.cy](mailto:supervision@cysec.gov.cy) within three months (**May 2, 2017**) from the publication of this circular.

Yours sincerely

Demetra Kalogerou  
Chairman of the Cyprus Securities and Exchange Commission